MISCELLANY.

Acknowledgment—Liability of Notary.—Where the defendant, a notary, certified that certain impersonators of the grantors were known to him, and that they were the persons who executed the deeds, and the plaintiff who accepted the deeds as security for a loan in reliance upon the certificate of the notary was defrauded, held, the defendant was guilty of negligence and must respond in damages for not fulfilling the requirements of § 1185 of the Civil Code: that "the acknowledgment of an instrument must not be taken, unless the officer taking it knows or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument." Something affirmative in the nature of evidence of the grantor's identity must appear, as an association with him in his relation to other people. Informal introductions and occasional meetings are not enough. Anderson *v.* Aronsohn (Cal. 1919), 184 Pac. 12.

In a similar case, occurring about the same time, the District Court of Appeals of California sought to absolve the notary on the ground that the fictitious grantor, whose name appeared in the deed, and the real owner of the property were not one and the same person; but, in review, the Supreme Court called attention to the fact that the decision was affirmed solely on the ground that any negligence of the notary was not the proximate cause of the loss. Brown *v.* Rives et al. (Cal.), 184 Pac. 32. All the decisions agree that, where the notary knowingly or intentionally certifies to a false acknowledgment he renders himself liable for losses resulting. People ex rel. Curtis *v.* Colby, 39 Mich. 456. The authorities are divided as to the liability of the notary for negligence, depending on whether the notary is deemed to be acting in a judicial or a ministerial capacity. Those courts which adopt the former view hold that the notary is not liable for negligence. Commonwealth *v.* Haines, 97 Pa. St. 228. The weight of authority, however, as well as the weight of reason is with the view that the act of the notary in taking an acknowledgment is ministerial in character. 1 Corpus Juris, 810; Commonwealth *v.* Johnson, 123 Ky. 437, 13 Ann. Cases 716. Under this view, the notary is held liable if he fails to exercise due care in certifying the acknowledgment, and his negligence is the proximate cause of the loss. Joost *v.* Craig, 131 Cal. 504; State *v.* Meyer, 2 Mo. App. 413; Commonwealth *v.* Johnson, supra; Devin, Deeds, § 527a. Contra, is the remote cause. Brown *v.* Rives, supra. But it need not be the sole cause, State *v.* Meyer, supra; Homan *v.* Wayer, 9 Cal. App. 123, 127. If the plaintiff is guilty of contributory negligence, the notary is absolved. Oakland Savings Bank *v.* Murphey, 68 Cal. 455; Hatton *v.* Holmes, 97 Cal. 208; People *v.* Cole, 139 Mich. 312. But, the fact

that the plaintiff has relied solely on the certificate of the notary is not deemed to be such contributory negligence as will bar a recovery. Joost *v.* Craig, supra; Homan *v.* Wayer, supra. The notary is not bound to certify as to the title, Overacre *v.* Blake, 82 Cal. 77, 80, nor guarantee the correctness of his certificate. Devlin, Deeds, § 527e.—Michigan Law Review.

Taxation—Federal Inheritance Tax—Transfer in Contemplation of Death.—The Federal Inheritance Tax Law (Acts of Congress, Sept. 8, 1916, ch. 463, § 202, 39 Stat. 777; U. S. Compiled Statutes, § 6336½c), provides: "That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated: * * *. (b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death, without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title; * * * "

Similar provisions in the inheritance tax laws of Illinois (Hurd's Rev. St. 1917, c. 120, § 1) and New York have been considered in several cases.

Where grantor's contemplation of death was the impelling motive causing him to make conveyance, the transfer is subject to an inheritance tax, although no evidence of that motive appears in the deed. Thus a conveyance by a father, 75 years of age and in feeble health, to son, where father remained in possession until his death, about a year thereafter, and continued to receive the profits and pay the taxes during such time, was made in contemplation of death, with intent to have it take effect in possession or enjoyment at death within the statute imposing an inheritance tax upon such a transfer of property. People *v.* Porter, 287 Ill. 401, 123 N. E. 59.

In People *v.* Burkhalter, 247 Ill. 600, 93 N. E. 379, the court said: "If the actual intention of the parties to a deed is that possession or enjoyment of the land shall be postponed until after the grantor's death, the transfer will be subject to the inheritance tax, even though such intention is not evidenced in writing. People *v.* Estate of Moir, 207 Ill. 180, 69 N. E. 905, 99 Am. St. Rep. 205. So will an absolute gift, though followed by possession and enjoyment of the property in the grantor's lifetime, if the gift was made by him in contemplation of his death (Estate of Merrifield *v.* People, 212 Ill.

400, 72 N. E. 446); and this without regard to any intent to evade the payment of the tax (Rosenthal *v.* People, 211 Ill. 306, 71 N. E. 1121)."

Conveyances without consideration, though absolute, made three days before the grantor submitted to a contemplated surgical operation, from the effects of which he died, are in contemplation of death, and therefore subject to an inheritance tax. Merrifield *v.* People, 212 Ill. 400, 72 N. E. 446.

A donor made a gift of corporate stock to a trustee for a granddaughter. The stock was transferred in June, 1902. In April preceding, he disclosed a purpose to reduce his estate by voluntary gifts, and thereby defeat the possibility of a stepson obtaining any portion of his estate by so reducing his estate that his wife would accept the provisions made for her for life under his will. About the same time he made other gifts to other relatives. He died in July. His health had been failing for several months. Held, that the gift of the corporate stock was made in contemplation of death, and was liable to the inheritance tax. In re Benton's Estate, 234 Ill. 366, 84 N. E. 1026.

Where a testator two weeks before his death gave his wife stocks and bonds to a large amount, declaring that he was not satisfied with the provision in his will for her benefit and desired to make her a present, the gift was made in contemplation of death, and was taxable under Tax Law (Consol. Laws, c. 60), § 221a, as added by Laws 1911, c. 732. In re Hodges' Estate, 215 N. Y. 447, 109 N. E. 559.

A deed of gift to a son, though made as an advancement, and, as such, chargeable against the son's ultimate share of the father's estate under a will existing at the time of the deed, is a "succession," under the New York statute (Act of June 30th, 1864, § 132), as a conveyance without "valuable and adequate consideration," and is chargeable with a tax of 1 per cent. on the value of the property conveyed. United States *v.* Banks, 17 Fed. Rep. 322.

In In re Birdsall's Estate, 22 Misc. Rep. 180, 49 N. Y. S. 450, evidence that one was 79 years old, afflicted with consumption, from which she could not recover, and under the constant care of a physician, with knowledge that death was imminent, made a deed of gift of the bulk of her property to her nieces, 8 days before her death, although the same property had been devised to them by her will, executed but a few months previous, shows that such transfer was made in contemplation of death, within N. Y. Laws 1892, c. 399 (Taxable Transfer Act) § 1. B. S.

Preference for Golf as Ground for Divorce.—The golf widow is asserting her legal rights in London, and presents a knotty legal problem for the judges to decide. Does a husband's preference for

golf instead of his wife's company constitute legal cruelty and entitle a neglected wife to a separate maintenance or divorce?

Harvey Hadden, who is quite wealthy, with a yearly income of about $50,000. has employed an imposing corps of legal talent, to defend his wife's action for divorce on the above ground. As it happens all of his attorneys are ardent devotees of the links. Even the judge has confessed being acquainted with the "considerable attractions" of the golf courses at Bodleigh, Salterton, where the defendant is alleged to have spent the time demanded by his wife.

Equity Favors the Diligent.—In Crumlish's Adm'r *v.* Shenandoah Valley R. Co., 40 W. Va. 647, the court said: "Equity ever favors those who are prompt and diligent in the assertion of their rights, and frowns with displeasure on those who listlessly stand by during the heat of battle, and, after the smoke has rolled away, come bravely forward, and seek to deprive others of the well deserved rewards of their vigilant efforts."

State's Claim to Divine Right.—In Woodward *v.* Blake, 38 N. Dak. 48, the court said: "The state is merely a corporation which the people make to serve their purpose, and not to obstruct their happiness or their natural rights. It has no claim to Divine right."